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Title IX

Creating Awareness and Action

Oxford Community Schools • Wednesday, August 5, 2020

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Roadmap for Awareness Training

- What is Title IX?
- Title IX Requirements
- New Title IX Regulations (effective 08.14.20)
- Scenarios
- Questions/Discussion
- Goal for Session = **Stay out of the Weeds!**

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What is Title IX?

“No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

-20 U.S.C. § 1681 (a)

Translation:

We want an educational environment free from sex-based harassment



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←
Then



Now
→



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Title IX Scope

- Historical Context = Sports
- Not-So-Historical Context = Sex Discrimination
- Modern Context = LGBTQ Students & Sexual Violence/Assault on Campus
 - Sex discrimination includes sexual violence and gender-based harassment
 - **The protections of Title IX extend to all academic, educational, extracurricular, athletic, and other programs of a school**, whether those programs take place on campus, in a school facility, at an off-campus class, seminar, or event that the school sponsors, or elsewhere
 - **Title IX protects both male and female students** and faculty and staff from sexual harassment by any school employees, non-employee third parties, and other students



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Title IX Enforcement

- Process/Responsibility
 - U.S. Department of Education, Office of Civil Rights (OCR)
- OCR Investigations
 - Investigates Complaints
 - Document Collection and Review
 - Interviews Staff
 - Details, details, details
 - Time-Intensive
- Lawsuits (Private Right of Action)
 - Present Trend ... as you might imagine



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School District Must ...

- Take Immediate Action to End **Sex-Based Harassment** and Prevent its Occurrence
- Appoint a Title IX Coordinator
- Develop and Publish District-Wide Policies and Procedures
- Train Employees and Students
- Create a Climate that Encourages Reporting
- Investigate Claims



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Gebser v. Lago Vista Ind Sch Dist 524 U.S. 274 (1998)

- *Facts* - Teacher initiated sexual contact with the student. Teacher had sexual intercourse with student off-campus during class time. Student did not report the relationship to school officials; the pair were discovered by a police officer and the teacher was arrested and terminated by the school district. Relationship covered Spring 1991-January 1993.
- *Key Holdings* - A school board can be liable for money damages under Title IX for employee-on-student harassment IF:
 - An official of the school who has the **authority to institute corrective measures** on the school district's behalf ...
 - Has **actual notice** of the employee's misconduct ...
 - Is **deliberately indifferent** to the employee's misconduct (e.g. "an official decision by the [district] not to remedy the violation")



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Davis v.
Monroe
Cty
Board of
Ed

526 U.S. 629 (1999)

- *Facts* - 5th grade student was alleged victim of prolonged pattern of sexual advances by her 5th grade classmate; male student attempted to touch her breasts and genital area and made statements such as "I want to get in bed with you" and "I want to feel your boobs"
- *Key Holdings* – A school board can be liable for money damages under Title IX for student-on-student sexual harassment IF:
 - The *Gebser* standards of **notice** and **deliberate indifference** are met ...
 - The school has **substantial control** over the "context" in which the harassment occurred and over the harasser ...
 - The conduct is "sexual harassment" which is conduct "**so severe, pervasive, and objectively offensive**" that it **"effectively denies equal access to an institution's resources or opportunities."**

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"Two Roads Diverged ..."

OCR
Guidance
(2000-2016)

SCOTUS
Standards
(1992-1999)

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Evolution of New Title IX Regulations

- Issued by the Department of Education in November 2018; first overhaul since 1997 ...
 - Impacts how schools will handle allegations of sexual harassment/assault
 - College-focused ... with an attempt to apply to K-12
- Public comment period concluded in January 2019
- Final Title IX rule submitted for approval in November 2019
- Final rule announced on May 6, 2020
- New rules take effect on **August 14, 2020**



New Vocabulary

Complainant = an individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent = an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment



(Re)Defining Sexual Harassment

- **Headline:** “For the First Time, Title IX Regulations Define Sexual Harassment”
- Sexual harassment means one of the following types of behaviors:
 - Conditioning aid, benefits, or services on an individual's participation in unwelcome sexual conduct (i.e., **quid pro quo harassment**)
 - Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to an education program or activity
 - Sexual assault, dating violence, domestic violence, or stalking [as defined by Clery Act and the Violence Against Women Act (VAWA)]
 - Mostly postsecondary, but need to familiarize with these definitions



When Do We Have to Respond?

A recipient with **actual knowledge** of sexual harassment **in an education program or activity** against a person **in the United States** must respond promptly and in a manner that is **not deliberately indifferent**.

- Any person may report sexual harassment/sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, telephone, in-person, or by email, using the contact information for the Title IX Coordinator
- Reports can be made at any time, including non-business hours



What Does That Mean?

- **“Actual knowledge”** of sexual harassment ...
 - Report to a Title IX Coordinator
 - Report to an official who has the authority to institute corrective measures on behalf of the school district (*Gebser*)
 - **Report to any employee of an elementary or secondary school**
 - “arguably broadens ... an elementary or secondary school’s obligation to respond to Title IX sexual harassment”
 - “unreasonable to expect young children to seek out specific employees for the purpose of disclosing Title IX sexual harassment”
- **“In a Program or Activity”** ...
 - Any location, event, or circumstance over which the recipient exhibits substantial control over the alleged harasser and the “context” in which the harassment occurred
 - Only have to address issues occurring against a person in the United States



What Does That Mean?

- **“Not Deliberately Indifferent”** ...
 - “The response must amount to deliberate indifference to discrimination. The administrative enforcement scheme presupposes that an official who is advised of a Title IX violation refuses to take action to bring the [district] into compliance. The premise, in other words, is an official decision by the [district] not to remedy the violation.”
 - Straight Outta *Gebser*
 - **“Clearly unreasonable in light of known circumstances ...”**
 - Good news, right?





Title IX Coordinator

- District MUST Have a Title IX Coordinator
- Function of Coordinator
 - Required by Title IX and Interpretive Guidance
 - *"The Title IX coordinator is an integral part of a recipient's systematic approach to ensuring nondiscrimination, including a nondiscriminatory environment"*
 - *"Ensure that [the district] maintains an environment for students and employees that is free from unlawful sex discrimination in all aspects of the educational experience, including academics, extracurricular activities, and athletics"*
 - Receive Complaints
 - Investigate Complaints*
 - Address Problems
 - Ensure Training / Ongoing Compliance by District Staff



Title IX Coordinator – Under New Regs

- Still required to have one or more persons identified
- Must have someone with the title "**Title IX Coordinator**" – officially and publicly
- Must be designated and "**authorized**" to coordinate district's compliance efforts
 - Check job description; inclusive, authorized?
- Name and contact information, including email, must be posted/provided ...
 - On district website
 - Send information to students, parents or legal guardians, unions or professional organizations holding agreements with the district
 - Listed in all handbooks



Title IX Coordinator

- Most Important Question to Know the Answer to ...

Who is the District's Title IX Coordinator?

- Important Questions to Ask ...

***Do We Have a Title IX Policy
(prohibiting discrimination on the basis of sex)?***

Do We Have a Procedure for Title IX Reporting/Investigating?



Formal Complaint Response

- Must investigate **every** formal complaint – can be filed by a complainant OR signed by the Title IX Coordinator (does not render impartial)
- Specific steps for investigating, dismissing, and determining responsibility in formal complaint
- **Required elements for grievance procedures:**
 - Treat parties equitably
 - Objective evaluation of all evidence
 - No conflict of interest for investigator or decision-makers
 - Presumption respondent is not responsible
 - Reasonably prompt timeframes
 - Description or list of possible discipline/other remedies
 - Statement of standard used (preponderance v. clear and convincing)
 - Appeals procedures and bases
 - Range of supportive measures available
 - No breach of privilege without waiver





Odds & Ends from New Regs

- Decision-maker cannot be the investigator or the Title IX Coordinator
- Informal resolution is PROHIBITED, except in limited circumstances
- Appeals permitted – with different decision-maker
- Training required; materials to be posted online
- Must maintain records for 7 years
- Mandatory dismissals available if complaint can't meet definition of "sexual harassment"



Essential – Staff Support

- Administrators must understand importance of role in supporting Title IX compliance
- Awareness of policy
- Awareness of procedures
- Model behavior
- Foster a culture of accountability
- Create a culture of reporting
- Be the "eyes and ears" for Title IX Coordinator/District



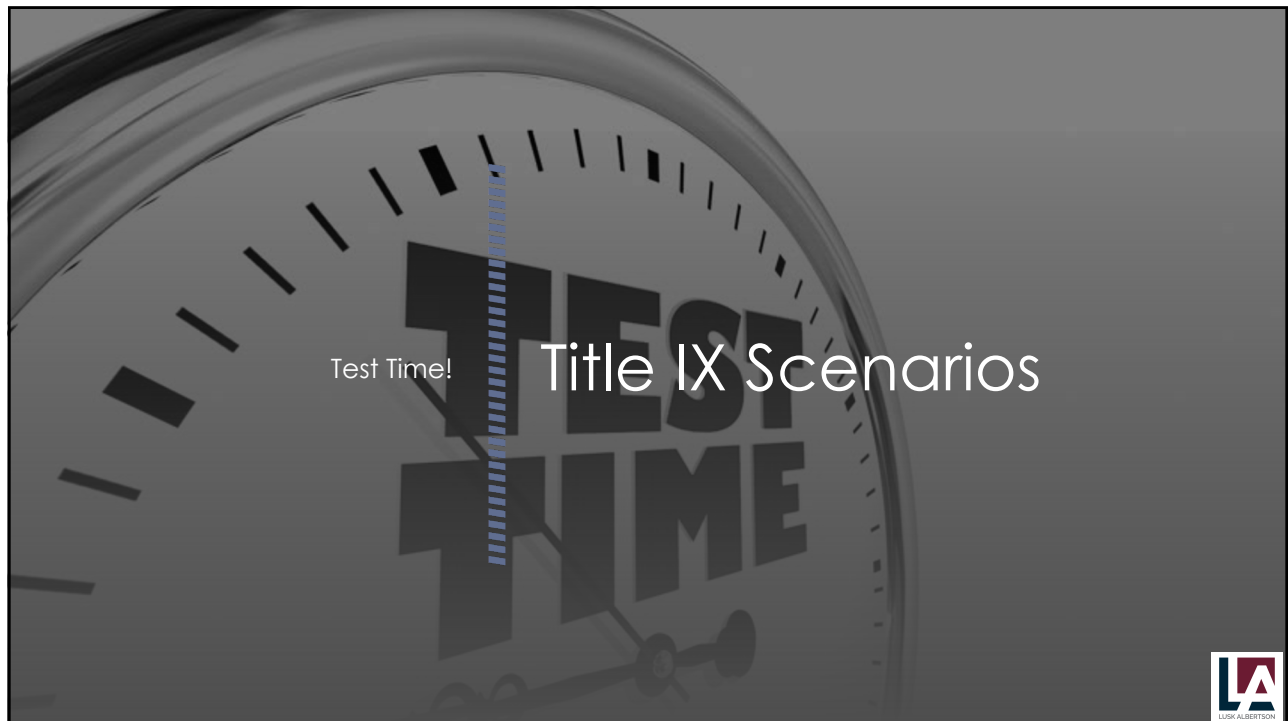
IX Things to Remember

- New Vocabulary: Complainant / Respondent
- Title IX Coordinator – Make it Official
- Posting of Info on Website / Distribution to Community
- Development of Grievance Process**
- Single Investigator Model No Longer Works
- Training ... for Everyone
- Report to Any Employee is Actual Knowledge
- Appeals Available
- Maintain Records for 7 Years

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Scenario #1

Kendra and Samantha are 9th graders who snuck into a party held by Chris, a 12th grader, on a Saturday night. After the party, Kendra tells Samantha she was cornered by Chris and that he touched her in a way that made her uncomfortable. Samantha becomes worried about Kendra and, on Monday, tells one of her teachers about the incident.

Is the teacher required to do anything?



Scenario #1 - Options

1. **No;** the issue happened outside of school / off-campus and was not reported by the potential victim
2. **Maybe;** the teacher could talk to the student about her feelings and see if she wants to file a formal complaint
3. **Yes;** the teacher should report the concern to administration so an investigation can be completed



Scenario #2

A middle school student is accused by a fellow student of sexual harassment. The accuser is a student with a long discipline record, multiple in- and out-of-school suspensions, and has, on at least on one occasion, falsely accused another student of theft. In short, none of the school's staff is willing to accept the accusation as true.

In light of the student's checkered past, should the school consider these allegations seriously?



Scenario #2 – Options

1. **No;** given the student's track record for lying, there is no reason to trust that what she is claiming now is truthful
2. **Yes;** the reputation of the complaining party makes no difference and the district must be responsive to the complaint





Scenario #3

Jordan, a 10th grader, tells a teacher at his school that he was sexually assaulted by a fellow student. The teacher informs Jordan the offense is a crime, so it must be reported to police.

What else, if anything, does the teacher need to do?



Scenario #3 - Options

1. **Nothing**; she told Jordan to contact the police, so she has met her obligation under the law.
2. **Contact the police herself** and then let the police investigate
3. **Advise** building administration so a school investigation can be done



Scenario #4

A middle school principal overhears teachers discussing an incident where a student inappropriately touched another student while on a school bus. The principal interviews the students. Both students seem dismissive of the incident and deny that they or bothered or hurt by what occurred.

Because the students deny they were negatively affected by the incident, is the principal required to report the incident to the students' parents or investigate?



Scenario #4 - Options

1. The principal is required to report to the parents and investigate
2. The principal should tell the parents, but no investigation is needed
3. The principal should see if either of the parents want to file a formal complaint and investigate if they do
4. The principal doesn't need to do anything because the students said there is no issue





Questions / Discussion



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Thank You!



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